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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 1091

WILLIAM A. DOSS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

I.

The petition should be stricken or denied pro forma because the petitioner has deliberately, and without excuse failed to cite in his petition the pages of the transcript to which reference is made. The omission is not inadvertent because petitioner calls attention to his disregard of the Court's rules.

Counsel for the State of Illinois are ordinarily extremely reluctant to ask this court to deny to any litigant a review of the merits of his case for failure to comply with mechanical rules governing the preparation and presentation of briefs.

In the instant case, however, the rule in question (rule 27, paragraph 3), which provides that

> "a reference * * * to the record * * * must be accompanied by the record page number"

and that

> "when reference is to a part of the evidence, the page citation must be specific,"

has been disregarded by the petitioner.

Not a single reference to the record appears in the entire petition. The omission was not inadvertent, however, but is recognized and admitted to have been deliberate on the part of the petitioner. At page 17 of his petition, he says:

> "The above statements are made without reference to record pages for the reason that the circumstances of the above statements will readily appear throughout the entire record by a mere reading thereof."

There is not the slightest excuse for this intentional disregard of a rule which has been promulgated in order that this court may discharge its very heavy labors with dispatch and which is announced with the imperative verb "*must*" twice repeated in the single paragraph of its text.

We cannot forbear the observation that the subject matter of this proceeding is one involving the petitioner's alleged contempt for the orderly processes of the judiciary. Yet petitioner has not seen fit to comply with this court's mandatory rules governing the submission for review of his conviction of contempt of a circuit court of Illinois and his charge that the Supreme Court of that state has denied him due process of law.

We submit that the intentional and admitted disregard of the rule in question warrants striking of the petition or its dismissal *pro forma*.

II.

The petition should be dismissed because no substantial federal question is presented.

The petitioner relies entirely upon the authority of this court's decision in *Bridges* v. *California*, 314 U. S. 252, to support his contention that he had a constitutional right to influence a grand jury by direct communications, of the character and tenor here in question.

A perusal of the *Bridges* case—the only authority cited by petitioner—is sufficient to distinguish that case from the instant case.

In the *Bridges* case, the judicial officer sought or intended to be influenced by newspaper publications was a judge—that is, was the court itself.

In the instant case, the judicial organ in question was a grand jury. Argument is not required to distinguish between attempts to influence a judge and attempts to influence a jury, whether the jury be grand or petit. Ever since jurors ceased to be triers of the fact upon their common knowledge as members of the vicinage, the utmost care has been taken to insulate them from unofficial communications intended to affect their findings.

It is an inveterate common law rule that attempts to influence a grand jury are contemptuous; and it has long been held that it is immaterial that the medium of communication be actually or ostensibly a newspaper or other publication intended for general distribution if the purpose and fair intent of the communication is to affect the grand jury's finding. *People* v. *Parker*, 374 Ill. 524; *In re Tyler*, 64 Cal. 434; *Ex Parte Shuler*, 210 Cal. 377; *U. S.* v. *Providence Tribune Co.*, 241 Fed. 524; *Dale* v. *State*, 189 Ind. 110.

Wharton's Criminal Practice and Pleading (8th Edition, section 307) thus states the rule:

> "Sending an unofficial volunteer communication to the grand jury, inviting them to start, on their own authority, a prosecution, is a contempt of court, and a misdemeanor at common law."

In the margin, we repeat in part the language of Mr. Justice Field as quoted by Wharton on Criminal Procedure (10th Edition, section 1295).[1]

There can be no doubt of the intent of the publications in the instant case. The petitioner was himself under investigation by the grand jury in question for criminal libel, the alleged libel having consisted in similar publications made to a grand jury in session some two years previously. (R. 131, 9.) He had been disbarred for these prior communications. (R. 132.)

The publications charged and found to be contemptuous appear from pages 10 to 46, inclusive, of the record. In

1. "There has hardly been a session of the grand jury of this court for years at which instances have not occurred of personal solicitation to some of its members to obtain or prevent the presentment or indictment of parties. And communications to that end have frequently been addressed to the grand jury filled with malignant and scandalous imputations upon the conduct and acts of those against whom the writers entertain hostility, and against the conduct and acts of former and present officers of this court and of previous grand juries of this district. All such communications were calculated to prevent and obstruct the due administration of justice, and to bring the proceedings of the grand jury into contempt. 'Let any reflecting man,' says a distinguished judge, 'be he layman or lawyer, consider of the consequences which would follow, if every individual could, at his pleasure, throw his malice or his prejudice into the grand jury room, and he will, of necessity, conclude that the rule of law which forbids all communication with grand juries, engaged in criminal investigations, except through the public instructions of courts and the testimony of sworn witnesses, is a rule of safety to the community. What value could be attached to the doings of a tribunal so to be approached and influenced? How long would a body, so exposed to be misled and abused, be recognized by freemen as among the chosen ministers of liberty and security? The recognition of such a mode of reaching grand juries would introduce a flood of evils, disastrous to the purity of the administration of justice, and subversive of all public confidence in the action of these bodies.'"

the margin, we quote[2] a single excerpt from the publications in question. (R. 41.)

The manifest object of the publication was to prevent the indictment of the petitioner and to procure the indictment of the State's attorney. The petitioner admittedly delivered copies of his mimeographed "newspaper" to members of the grand jury. The contempt was flagrant.

The respondent submits that it is impossible to distort guarantees of freedom of speech and due process of law into sanctions for deliberate and overt attempts to influence the action of a grand jury.

The respondent further submits that the petition for *certiorari* should be denied.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

William C. Wines,
Assistant Attorney General,
Of Counsel.

2. Let no person in Piatt County especially the members of the present grand jury, and the members especially of the grand jury coming February 2nd, next, not to underestimate the great importance involved in the matters now pending before our grand jury as to whether or not, Judge Doss should, or should not, be indicted, fined or jailed for publications of matters in his Liberty Press, because if these matters, vital not only to me, but to the people of Piatt County, can be lightly treated—and the grand jury falsely made to believe that it is their imperative duty to follow the advice of a States Attorney, or an assistant States Attorney to indict upon such things merely because they advise it to be so, then, indeed, is the liberty of every citizen in Piatt County in jeopardy every hour that our present States Attorney, Carl I. Glasgow, may hold office, or any special States Attorney acting like him. (R. 41.)